

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, ex rel.)	
State Engineer,)	No. 69 CV 07941 KWR/KK
)	
Plaintiff,)	Rio Chama Adjudication
)	
v.)	Pueblo Claims Subproceeding 1
)	
ROMAN ARAGON, et al.,)	
)	
Defendants.)	
_____)	

JOINT STATUS REPORT

Pursuant to this Court’s Order of December 29, 2022 (Document 11631), the undersigned Parties submit this Joint Status Report regarding negotiations to resolve the water rights claims of Ohkay Owingeh in both the above-captioned case (*Aragon*) and *State of New Mexico ex rel. State Engineer v. Abbott*, No. 68-CV-07488 (KWR/JHR) (*Abbott*). This Report also addresses the status of negotiations to resolve the water rights claims of Santa Clara Pueblo in *Abbott*. With slight variation, this Joint Status Report is being filed simultaneously in *Aragon* and *Abbott*.

1. Progress in Settlement Negotiations

At Ohkay Owingeh’s request, the settlement parties in both *Aragon* and *Abbott* (some of whom are in both cases) have focused most of their time and resources on completing settlement negotiations to resolve Ohkay Owingeh’s water rights claims, and those of the United States as trustee on behalf of Ohkay Owingeh, in *Aragon*. Weekly negotiation sessions under the guidance of two mediators have been held, as well as numerous additional meetings of subsets of the settlement parties. Upwards of 60 representatives of the parties attend the full group meetings.

The full settlement group met weekly nearly every Wednesday for mediation sessions lasting three to four hours during this period, including five meetings in person. More than 53 meetings have been conducted in various combinations between or among the settlement parties, their counsel, and the mediators. At Ohkay Owingeh's request, the settlement parties have agreed to seek to resolve the Pueblo's claims in *Aragon* separately from those in *Abbott* (and Santa Clara Pueblo's claims in that case), but, because of some overlapping of issues, the parties in *Abbott* have been participating in *Aragon* negotiation sessions.

The settlement parties have reached an agreement in *Aragon* that will, once approved by Congress, resolve Ohkay Owingeh's Rio Chama claims and the claims of the United States as trustee for the Pueblo. The language of a settlement agreement has been approved by counsel, and will be submitted to principals for review and approval in the next few weeks. The Ohkay Owingeh Tribal Council approved the settlement agreement on May 17, 2023. Except for the United States, which needs congressional authorization to execute the settlement agreement, the settlement parties anticipate full execution of the agreement by June 30, 2023. In addition, numerous acéquiás will also be parties to the agreement and will be approving and executing the agreement in the coming months. Ohkay Owingeh and the State of New Mexico have drafted federal legislation to implement the *Aragon* settlement, and the parties are currently reviewing that draft. Plans to introduce the legislation in Congress will be implemented soon.

Simultaneously with the settlement efforts in *Aragon*, Ohkay Owingeh, Santa Clara Pueblo, and the United States are working to develop a path to resolution of the water rights claims of both Pueblos, and that of the United States as trustee for both Pueblos, in the Rio Santa Cruz and Rio de Truchas basins in the *Abbott* case. Santa Clara Pueblo has fully supported Ohkay Owingeh's request to resolve Ohkay Owingeh's claims in *Aragon* prior to commencing

settlement negotiations in *Abbott*. However, the intensity of the *Aragon* negotiations schedule has led to resource constraints for Santa Clara Pueblo. In addition, Santa Clara Pueblo and the United States are collaborating on technical and legal work to update the United States' preliminary water rights claims as trustee for Santa Clara Pueblo, as well as the Pueblo's claims on its own behalf in *Abbott*. (For procedural context, subproceedings to adjudicate Santa Clara Pueblo's water rights were never initiated in *Abbott*.) The United States and Santa Clara Pueblo are also collaborating on various technical studies to help assess "wet water" settlement options for Santa Clara Pueblo in the Rio Santa Cruz Basin. Ohkay Owingeh's *Abbott* claims are fully developed and preliminary discussions regarding settlement options have occurred.

In the last joint status report, Santa Clara Pueblo reported that it was hopeful that technical work needed both for updating claims and for initial settlement concepts could be completed in time to allow substantive negotiations to begin with the *Abbott* settlement parties following completion of negotiations for Ohkay Owingeh's water rights in *Aragon*. However, due to unforeseen delays in contracting processes for the United States, which are beyond the control of counsel of record for the United States, the progress of technical studies necessary for the negotiation of Santa Clara Pueblo's claims in *Abbott* has been impeded. For that reason, Santa Clara Pueblo and the United States need additional time to complete the requisite initial technical analyses. The settlement parties in *Abbott* believe that the claims of Ohkay Owingeh and Santa Clara Pueblo should be discussed at the same time; as a result, settlement negotiations cannot proceed until Santa Clara Pueblo and the United States complete their technical analyses and settlement concepts.

2. Scheduling of Dispositive Motions

The undersigned Parties continue to believe that the resumption of litigation would hamper their efforts to execute and implement the settlement that has been reached in *Aragon* to resolve Ohkay Owingeh's claims, and to continue settlement efforts of both Pueblos' claims in *Abbott*. The undersigned Parties are committed to the negotiation process. Therefore, they do not anticipate the need for this Court to schedule the filing and briefing of dispositive motions within the next six months.

3. Rescheduling the Trial

Because Ohkay Owingeh's claims in *Aragon* have been settled, and the settlement parties are working together to implement that settlement, the undersigned Parties do not believe that the trial of Ohkay Owingeh's water rights claims in this *Aragon* Subproceeding should be scheduled at this time.

4. Expectations on Timing of Settlement

Settlement of the claims of Ohkay Owingeh and the United States in *Aragon* has been achieved in the form of a settlement agreement that is ready for execution by the principals. Settlement of the Pueblos' claims, and those of the United States, in *Abbott* appears to be achievable within two years.

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5. Other Matters

The undersigned Parties suggest that the Court require the filing of a joint status report six months from now, on December 8, 2023, at which time they will report to the Court on their progress and on the question of whether dispositive motions should be scheduled, or litigation should otherwise resume.

Dated: June 9, 2023

Respectfully submitted,

/s/ Curtis G. Berkey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of June, 2023, I filed the foregoing electronically through the CM/ECF system, which caused the Parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Curtis G. Berkey

Curtis G. Berkey